

# White Exhibit P

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7 *Attorneys for Plaintiff*  
8 *Dreamstime.com, LLC*

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10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN FRANCISCO DIVISION

13 DREAMSTIME.COM, LLC, a Florida  
14 LLC,

15 Plaintiff,

16 vs.

17 GOOGLE, LLC, a Delaware LLC; and  
18 Does 1-10,

19 Defendants.  
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Case No. 3:18-CV-01910-WHA

**PLAINTIFF DREAMSTIME.COM  
LLC'S RESPONSES AND  
OBJECTIONS TO DEFENDANT  
GOOGLE, LLC'S FIRST SET OF  
INTERROGATORIES**

**CONTAINS CONFIDENTIAL  
INFORMATION SUBJECT TO  
PROTECTIVE ORDER (TO BE  
ENTERED BY THE COURT) IN  
RESPONSE NO. 7 AND EXHIBIT 11  
HERETO**

Hon. William Alsup

24 PROPOUNDING PARTY: PLAINTIFF DREAMSTIME.COM, LLC

25 RESPONDING PARTY: DEFENDANT GOOGLE, LLC

26 SET NO.: ONE (1)  
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1 daily spending limits system (which, as alleged below, also frequently overcharges  
 2 Dreamstime) as a means for budgeting for online advertising, Dreamstime noticed that the  
 3 amount Google was charging for a particular ad campaign suddenly spiked from \$400 per  
 4 day to over \$2,400 per day. When Dreamstime investigated, it found that despite having a  
 5 Target CPA set for the campaign at no more than \$240, Google had favored ads that  
 6 generated only 17 conversions at a total cost of \$16,000 – *i.e.*, CPA of \$951 – over other  
 7 ads that had generated 7 conversions at a total cost of \$691 – *i.e.*, CPA of \$99. Elena  
 8 Dobre emailed her support contacts at Google, Carmen Punga and Ana Sipciu, to inquire  
 9 about this apparent overcharging for Dreamstime’s campaign. Echoing the content of  
 10 many of Google’s responses Ms. Sipciu responded in an email on December 12, 2016 only  
 11 that the campaign had behaved technically as it was supposed to, according to Google’s  
 12 internal algorithm (P0000675- P0000676). Google knew this explanation was false when  
 13 given, and intended that Dreamstime rely upon it (which it did) by overspending on CPA  
 14 ad campaigns.

15 As noted above, Dreamstime has sought additional discovery from Google to  
 16 complete its relevant ad and ad change histories, and it reserves the right to amend this  
 17 response based upon further investigation and discovery from Google.

18 **INTERROGATORY NO. 12:**

19 Identify every instance in which you contend that Google "drastically exceed[ed]  
 20 the daily budgeted limits that Dreamstime sets for its campaigns," as alleged in Paragraph  
 21 91 of the First Amended Complaint, including (a) the specific advertisement(s), Ad  
 22 Group(s), and Advertising Campaign(s) involved, (b) the date(s) on which each  
 23 advertisement was run, (c) the specific bases for your belief that the advertisement was  
 24 overdelivered, and (d) all average daily budget(s) Dreamstime set for each allegedly  
 25 overdelivered Advertising Campaign during the month(s) that Dreamstime claims the  
 26 overdelivery occurred, including the date(s) on which Dreamstime made any changes to  
 27 those average daily budgets.

**RESPONSE TO INTERROGATORY NO. 12:**

Plaintiff incorporates by reference the preliminary statement and general objections set forth above. In addition, Plaintiff specifically objects on the grounds that: (a) the information sought by this interrogatory would require a summary of voluminous records being produced (and/or sought to be produced by Google) in discovery; (b) the information sought by this Interrogatory is in Google's possession, and in many cases exclusively in Google's possession; (c) the Interrogatory is compound; and (d) this Interrogatory is a premature and improper contention interrogatory at the outset of discovery which seeks a detailed narrative of all of the bases for Dreamstime's contentions in this matter before substantial discovery has been completed through other means (*See In re Convergent Technologies*, 108 F.R.D. 328, 332-33 (N.D. Cal. 1985)).

Subject to, and without waiving, the foregoing general and specific objections, Dreamstime responds as follows:

Dreamstime refers Google to its responses to Google's Requests for Production (Set One), wherein Dreamstime has agreed to provide communications between it and Google related to overdelivery issues with ads.

Google's advertising policies provide that overdelivery is a breach of contract. The definition of overdelivery in the AdWords Agreement and the policies and procedures incorporated by reference therein has changed over time. One of the current policies states that "in a given billing period, you're never charged more than the average number of days in a month (roughly 30.4) times your daily budget." However, for most of the time this policy only allowed minimal daily excesses above daily spending limits and/or provided for credits to be applied for any excesses. Google breached the contract by overdelivering Dreamstime's ads, causing spending limits to be exceeded on a regular and systematic basis.

Because Google's policy regarding overdelivery was a moving target, and because much of the information relating to overdelivery is in Google's exclusive possession, Dreamstime requires discovery from Google in order to this Interrogatory. In particular,

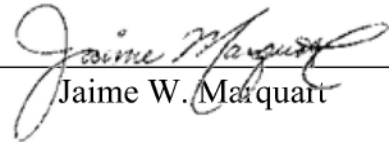
1 there are many variables requiring discovery from Google to take fully into account that  
2 relate to overdelivery, such as Google's definition of the daily budget in relationship to  
3 accelerated delivery and long term performance, unannounced changes in policy regarding  
4 overdelivery, and tremendous limitations on what constitutes fraudulent traffic for which  
5 Dreamstime was not supposed to pay. Dreamstime reserves the right to amend this  
6 Interrogatory after further investigation and discovery from Google.

7  
8 Dated: April 29, 2019

BAKER MARQUART LLP  
Jaime W. Marquart  
Donald R. Pepperman

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11 BAILEY DUQUETTE P.C.  
James Bailey (*pro hac vice*)

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13  
14 By: \_\_\_\_\_

  
Jaime W. Marquart

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16 *Attorneys for Plaintiff*  
17 *Dreamstime.com, LLC*  
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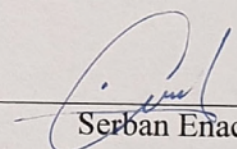
VERIFICATION

I, Serban Enache, declare:

I have read PLAINTIFF DREAMSTIME.COM LLC'S RESPONSES AND  
OBJECTIONS TO DEFENDANT GOOGLE, LLC'S FIRST SET OF  
INTERROGATORIES and know its contents. I am an authorized representative of  
plaintiff Dreamstime.com LLC. I believe, based on reasonable inquiry, that the responses  
contained therein are true and correct to the best of my knowledge, information and belief.

I declare under penalty of perjury under the laws of the United States of America  
that the foregoing is true and correct.

Executed this 26 th day of April, 2019, at Bucharest, ROMANIA.

  
\_\_\_\_\_  
Serban Enache

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*Attorneys for Plaintiff  
Dreamtime.com, LLC*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

DREAMSTIME.COM, LLC, a Florida  
LLC,

Plaintiff,

vs.

GOOGLE, LLC, a Delaware LLC; and  
Does 1-10,

Defendants.

**Case No. 3:18-CV-01910-WHA**

**PLAINTIFF DREAMSTIME.COM  
LLC'S SUPPLEMENTAL RESPONSES  
AND OBJECTIONS TO DEFENDANT  
GOOGLE, LLC'S FIRST SET OF  
INTERROGATORIES**

**Hon. William Alsup**

**CONTAINS CONFIDENTIAL  
INFORMATION SUBJECT TO THE  
PROTECTIVE ORDER IN THE  
ATTACHED EXHIBITS 2 AND 4.**

PROPOUNDING PARTY: PLAINTIFF DREAMSTIME.COM, LLC  
RESPONDING PARTY: DEFENDANT GOOGLE, LLC  
SET NO.: ONE (1)



1 Dreamstime asked for this information in its interrogatory requests and  
2 Google agreed to produce it. It is unduly burdensome to require Dreamstime to  
3 perform a full audit of its ad campaigns to assess its target CPA versus its  
4 effectively paid CPA given the information Dreamstime has available to it.  
5 Dreamstime has sought additional discovery from Google to complete its relevant  
6 ad and ad change histories, and it reserves the right to amend this response based  
7 upon further investigation and discovery from Google.

8 **INTERROGATORY NO. 12:**

9 Identify every instance in which you contend that Google "drastically  
10 exceed[ed] the daily budgeted limits that Dreamstime sets for its campaigns," as  
11 alleged in Paragraph 91 of the First Amended Complaint, including (a) the specific  
12 advertisement(s), Ad Group(s), and Advertising Campaign(s) involved, (b) the  
13 date(s) on which each advertisement was run, (c) the specific bases for your belief  
14 that the advertisement was overdelivered, and (d) all average daily budget(s)  
15 Dreamstime set for each allegedly overdelivered Advertising Campaign during the  
16 month(s) that Dreamstime claims the overdelivery occurred, including the date(s) on  
17 which Dreamstime made any changes to those average daily budgets.

18 **SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 12:**

19 Plaintiff incorporates by reference the preliminary statement and general  
20 objections set forth above. In addition, Plaintiff specifically objects on the grounds  
21 that: (a) the information sought by this interrogatory would require a summary of  
22 voluminous records being produced (and/or sought to be produced by Google) in  
23 discovery; (b) the information sought by this Interrogatory is in Google's  
24 possession, and in many cases exclusively in Google's possession; (c) the  
25 Interrogatory is compound; and (d) this Interrogatory is a premature and improper  
26 contention interrogatory which seeks a detailed narrative of all of the bases for  
27 Dreamstime's contentions in this matter before substantial discovery has been  
28



1 completed through other means (*See In re Convergent Technologies*, 108 F.R.D.  
2 328, 332-33 (N.D. Cal. 1985)).

3 Subject to, and without waiving, the foregoing general and specific  
4 objections, Dreamtime responds as follows:

5 Dreamtime refers Google to its responses to Google's Requests for  
6 Production (Set One), wherein Dreamtime has agreed to provide communications  
7 between it and Google related to overdelivery issues with ads.

8 Google's advertising policies provide that overdelivery is a breach of  
9 contract. The definition of overdelivery in the AdWords Agreement and the policies  
10 and procedures incorporated by reference therein has changed over time. One of the  
11 current policies states that "in a given billing period, you're never charged more  
12 than the average number of days in a month (roughly 30.4) times your daily  
13 budget." However, for most of the time this policy only allowed minimal daily  
14 excesses above daily spending limits and/or provided for credits to be applied for  
15 any excesses. Google breached the contract by overdelivering Dreamtime's ads,  
16 causing spending limits to be exceeded on a regular and systematic basis.

17 Because Google's policy regarding overdelivery was a moving target, and  
18 because much of the information relating to overdelivery is in Google's exclusive  
19 possession, Dreamtime requires discovery from Google in order to this  
20 Interrogatory. In particular, Dreamtime requires a full history of all changes made  
21 by Google to Dreamtime's ad campaigns, which Dreamtime does not have access  
22 to. Dreamtime was advised by Google representatives to increase its daily budget  
23 with assurances that the high daily budget would not be reached. Google then  
24 changed its policy regarding daily budget limits, which led to an unfair increase in  
25 Dreamtime's monthly cost per conversion due to daily ad spends that drastically  
26 exceeded the daily budget set by Dreamtime. Dreamtime contends Google's  
27 policy changes were in bad faith. There are many variables requiring discovery  
28 from Google to take fully into account that relate to overdelivery, such as Google's

1 definition of the daily budget in relationship to accelerated delivery and long term  
2 performance, unannounced changes in policy regarding overdelivery, and  
3 tremendous limitations on what constitutes fraudulent traffic for which Dreamstime  
4 was not supposed to pay. Dreamstime reserves the right to amend its response to  
5 this Interrogatory after further investigation and discovery from Google.

6  
7 Dated: August 29, 2019

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James Bailey (*pro hac vice*)

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12  
13 By: 

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*Dreamstime.com, LLC*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

DREAMSTIME.COM, LLC, a Florida LLC,

Plaintiff,

vs.

GOOGLE LLC, a Delaware LLC; and Does 1-10,

Defendants.

Case No. 3:18-CV-01910-WHA

**PLAINTIFF DREAMSTIME.COM LLC'S  
RESPONSES AND OBJECTIONS TO  
DEFENDANT GOOGLE LLC'S THIRD  
SET OF INTERROGATORIES**

Hon. William Alsup

PROPOUNDING PARTY: DEFENDANT GOOGLE LLC  
RESPONDING PARTY: PLAINTIFF DREAMSTIME.COM LLC  
SET NO.: THREE (3)

1 III.

2 **RESPONSES AND OBJECTIONS TO THIRD SET OF INTERROGATORIES**

3 **INTERROGATORY NO. 16:**

4 Identify each instance during the Relevant Period (including by account number and  
5 invoice date) in which Dreamstime contends that Google charged Dreamstime more than its  
6 Monthly Charging Limit for a given Adverting Campaign.

7 **RESPONSE TO INTERROGATORY NO. 16:**

8 Plaintiff incorporates by reference the preliminary statement and general objections set  
9 forth above. In addition, Plaintiff specifically objects on the grounds that: (a) the information  
10 sought by this Interrogatory would require a summary of voluminous records being produced  
11 (and/or sought to be produced by Google) in discovery; (b) the information sought by this  
12 Interrogatory is in Google's possession, and in many cases is exclusively in Google's possession;  
13 and (c) this Interrogatory is a premature and improper contention interrogatory at the outset of  
14 discovery which seeks a detailed narrative of all of the bases for Dreamstime's contentions in this  
15 matter before substantial discovery has been completed through other means (*See In re*  
16 *Convergent Technologies*, 108 F.R.D. 328, 332-33 (N.D. Cal. 1985)).

17 Subject to, and without waiver of, the foregoing general and specific objections,  
18 Dreamstime responds as follows. As set forth in paragraphs 88 through 91 (and Exhibit N) of its  
19 Amended Complaint, Dreamstime's allegations are that Google systematically overcharged  
20 Dreamstime for many of its ads and ad campaigns by exceeding the daily budget. Prior to  
21 Google's recent change in its overdelivery policy, Google did not have a policy – or Dreamstime  
22 was never informed by Google of a policy – permitting Google to exceed the monthly budget.

23 For those times during the Relevant Period that Google did enforce a policy of not  
24 exceeding Dreamstime's monthly budget, or not exceeding Dreamstime's monthly budget by  
25 more than a predetermined amount, Google's enforcement of this policy defeated the purpose  
26 behind Dreamstime's advertising campaigns as it resulted in Google drastically exceeding the  
27 daily budget at the beginning of a period by a very large amount, thus generating untargeted and  
28 inefficient traffic. This untargeted and inefficient traffic in turn increased Dreamstime's future



1 costs, because untargeted traffic leaves a site with little to no engagement and lowers the AdWords  
2 quality score (requiring higher bids to have an ad displayed).

3 In any event, setting forth each and every instance in which the daily budget for individual  
4 ads or advertising campaigns was exceeded during the Relevant Period is unduly burdensome.  
5 This is especially true given that Google is in possession of this information. In contrast, Google  
6 no longer provides access to all of the historical performance-related data, like historical budget  
7 changes, to Google Ads customers like Dreamstime. Not only is the budgetary information not  
8 available to Dreamstime, but it is not possible to see, through Google Ads, which campaigns used  
9 cost-per-click (CPC), enhanced CPC (eCPC) or cost-per-acquisition (CPA) options over a period  
10 of time. For some historical periods, one can see when an adjustment was made, but one cannot  
11 see how Dreamstime bid in the past (Google limits this information from Adwords). In other  
12 words, for many of the older campaigns, Dreamstime does not know the complete information  
13 about which campaigns used, for example, CPA and since when – which would be relevant to its  
14 allegations of overcharging.

15 Dreamstime is seeking through discovery information from which it can assess how the  
16 AdWords bidding system calculated a bid amount applicable to a campaign based upon  
17 Dreamstime's inputs. Dreamstime sought and received some but not all of the discovery related to  
18 its account histories from Google, which provided responses on or about August 29, 2019 (and, in  
19 native format on September 12, 2019). Dreamstime clarified and supplemented its discovery  
20 requests through a third set of document requests and interrogatories related specifically to  
21 AdWords on September 23, 2019, and Google served objections and non-responses on October  
22 23, 2019.

23 For now, for the reasons set forth above, Dreamstime cannot respond to this Interrogatory  
24 without further discovery from Google. Instead, Dreamstime refers Google to the documents it  
25 has already produced in this case. Dreamstime will amend its disclosures once it has reviewed  
26 this further discovery from Google.

VERIFICATION

I, Serban Enache, declare:

I have read PLAINTIFF DREAMSTIME.COM LLC'S RESPONSES AND  
OBJECTIONS TO DEFENDANT GOOGLE LLC'S THIRD SET OF  
INTERROGATORIES (NOS. 16-19) and know its contents. I am an authorized  
representative of plaintiff Dreamstime.com LLC. I believe, based on reasonable inquiry,  
that the responses contained therein are true and correct to the best of my knowledge,  
information and belief.

I declare under penalty of perjury under the laws of the United States of America  
that the foregoing is true and correct.

Executed this 4 day of November, 2019, at Bucharest, ROMANIA.

  
\_\_\_\_\_  
Serban Enache

VERIFICATION